IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

TRC.No. 184 of 2002()

TA.59/1997 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.

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PETITIONER/ APPELLANT IN T.A.

M/S.VOLTAS LIMITED, PROVIDENCE ROAD,
ERNAKULAM,KOCHI-18.

BY ADV. SRI.ANTONY DOMINIC
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENT/ RESPONDENT IN T.A.

STATE OF KERALA.

BY SHRI V.V. ASOKAN, SPL. GOVERNMENT PLEADER (TAXES)

THIS TAX REVISION CASE HAVING COME UP FOR ADMISSION ON 26/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

T.R.C. NO. 184 OF 2002 &
C.M.P.NO. 3069 OF 2002

Dated this the 26th June, 2007

O R D E R

H.L.DATTU, C.J.

The delay of 70 days in filing the Tax Revision Case is condoned.

2. The assessee, being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal, Kozhikode in T.A.No.59 of 1997, dated 26th February 2001, for the assessment year 1994-95, is before us in this Tax Revision Case.

3. The assessee has raised the following questions of law for our consideration and decision. They are as under:

> "i) in the facts and circumstances of the case ought not the tribunal have held that the transaction in question is a transaction coming under Section 3 (A) of the CST Act relying upon the judgment of the Supreme Court reported in 38 STC 475 and 43 STC 457?
>
> ii) in the facts and circumstances of the case ought not the tribunal have held that there is no attempt of evasion of tax under the KGST Act and hence the levy and confirmation of penalty was illegal?"

4. The questions of law raised by the assessee are no more res integra in view of the orders passed by this Court in **M/s.Voltas Limited** v. **State of Kerala** ((2003) 11 KTR 505 (Ker)). In the said decision, the Court has stated as under:

> "There is no dispute in this case that the consignment under transport was accompanies only by a photocopy of the invoice and in fact there is a writing in ink regarding the date of the invoice. Though the petitioner had obtained sanction for release of the goods on furnishing bank guarantee the petitioner did not make any effort before the adjudicating authority, viz., the Sales Tax Officer (Enquiry) to substantiate its contentions by producing the original of the invoice and other supporting materials. The Sales Tax Officer (Enquiry) had stated so in the adjudication order. Also the petitioner did not make any attempt to produce those documents either before the first appellate authority or before the Tribunal. In fact both the appellate authorities had commented on that. In these circumstances, even though the counsel for the petitioner has sought for one more opportunity to produce all those documents, we are not inclined to accede to the said request. In the absence of any supporting documents being produced to substantiate the claim, we cannot find fault with any of the authorities including the Tribunal for imposition of penalty and sustaining the same. In these circumstances, we do not find any reason to interfere with the order of the Tribunal.
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> As to the submission that, if the penalty order stands, it will have an impact on the assessment, it was held that, the imposition of penalty under Section 29A and sustaining the same by two appellate authorities by themselves cannot be a ground for setting aside the assessment order already made. If for this reason alone the Deputy Commissioner invokes his jurisdiction under Section 35 of the Act certainly the

> petitioner can establish by producing all documents that in fact there was neither evasion nor any attempt at evasion in such proceedings. It is also made clear that this judgment will not stand in the way of the petitioner independently establishing the above facts."

5. In view of the law declared by this Court in the aforesaid decision, the questions of law framed by the assessee require to be answered against the assessee and in favour of the Revenue.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

T.R.C.NO. 184 OF 2002

O R D E R

26th June, 2007